

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

**H & M PLUMBING AND
MECHANICAL CONTRACTING, INC.**

and

**LABORERS INTERNATIONAL UNION OF
NORTH AMERICA, LOCAL UNION NO. 210**

**Cases 03-CA-107687
03-CA-111923
03-CA-112628**

DECISION AND ORDER

Statement of the Cases

On May 19, 2014, H & M Plumbing and Mechanical Contracting, Inc. (the Respondent), Laborers International Union of North America, Local Union No. 210 (the Union), and the General Counsel of the National Labor Relations Board entered into a Formal Settlement Stipulation, subject to the Board's approval, providing for the entry of a consent order by the Board and a consent judgment by any appropriate United States Court of Appeals. The parties waived all further and other proceedings before the Board to which they may be entitled under the National Labor Relations Act, as amended, and the Board's Rules and Regulations, and the Respondent waived its right to contest the entry of a consent judgment or to receive further notice of the application therefor.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Formal Settlement Stipulation is approved and made a part of the record, and the proceeding is transferred to and continued before the Board in Washington, D.C., for the entry of a Decision and Order pursuant to the provisions of the Formal Settlement Stipulation.

Based on the Formal Settlement Stipulation and the entire record, the Board makes the following:

Findings of Fact

1. The Respondent's business

At all material times, the Respondent has been a corporation with an office and place of business located in Buffalo, New York (Respondent's facility), and has been a plumbing contractor in the construction industry providing a variety of professional residential and commercial plumbing services.

Annually, the Respondent, in conducting its operations described above, purchases and receives at its Buffalo, New York facility goods valued in excess of \$50,000 directly from points outside of the State of New York.

At all material times, the Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The labor organization involved

At all material times the Union has been a labor organization within the meaning of Section 2(5) of the Act.

3. The appropriate unit

The following employees of the Respondent (the unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All employees who perform or who are hired to perform any of [the] services covered by Article II, Jurisdiction, in the 2007-2012 collective-bargaining agreement, excluding all other employees, including plumbers, drivers, operating engineers, clerical employees, guards and supervisors as defined by the Act.

At all material times until June 30, 2012, the Respondent, an employer engaged in the building and construction industry, recognized the Union as the exclusive collective-bargaining representative of the unit without regard to whether the Union's majority status had ever been established under Section 9(a) of the Act. Such recognition was embodied in successive collective-bargaining agreements, the most recent of which was effective from July 1, 2007 through June 30, 2012.

At all material times until June 30, 2012, based on Section 9(a) of the Act, the Union was the limited exclusive collective-bargaining representative of the unit.

On September 27, 2012, the Board certified the Union as the exclusive collective-bargaining representative of the unit.

At all times since September 27, 2012, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

ORDER

Based on the above findings of fact, the Formal Settlement Stipulation, and the entire record, and pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board orders that the Respondent, H & M

Plumbing and Mechanical Contracting, Inc., Buffalo, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing or failing to provide information requested by Laborers International Union of North America, Local 210 that is necessary for and relevant to its duties as the exclusive bargaining agent of a unit of employees at the Respondent.

(b) In any like or related manner interfering with employees' rights under Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) The Respondent agrees that it will supply the information identified in the attached Appendix A within thirty (30) days of the effective date of this Settlement Stipulation.

(b) Within 14 days of service by the Region, post at its Military Road location a copy of the attached Notice to Employees marked "Appendix B." Copies of the Notice, on forms provided by Region 3, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification by a responsible official on a form provided by Region 3, attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C., June 25, 2014.

Mark Gaston Pearce, Chairman

Phillip A. Miscimarra, Member

Nancy Schiffer, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

APPENDIX A

1. As requested on May 29, 2013, a list of all jobs performed by H&M Plumbing & Mechanical Contracting, Inc. (H&M) in 2013, and for each job listed:
 - A. A complete description of the scope of the work involved;
 - B. A list of all employees, including job titles, hours worked, and union affiliation, if any.
2. As requested July 3, 2013, a list of all jobs that were not awarded to H&M for the last two (2) years, including:
 - A. The reason(s) why H&M did not receive the job, if known;
 - B. The company that was awarded the job, and reason(s) why they were awarded the job, if known;
 - C. The difference in estimated cost between company awarded the job and H&M's bid on the project.
3. As requested on July 3, 2013, a list of all jobs and/or bids, if any, from which H&M was removed, if any, over the last two (2) years, and the reason(s) why H&M was removed.
4. As requested on July 3, 2013, a list of all jobs H&M did not receive because of customers' stated concerns over possible labor disputes between the Local 210 and the Plumbers' Union, or between any other labor organizations, if any.
5. As requested on August 16, 2013, copies of all addenda to the collective bargaining agreement between H&M and Local 22, including all memoranda of agreement, memoranda of understanding and similar/related documents between H&M and Local 22.

APPENDIX B

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

PURSUANT TO A STIPULATION PROVIDING FOR A BOARD ORDER AND A CONSENT JUDGMENT OF ANY APPROPRIATE UNITED STATES COURT OF APPEALS

FEDERAL LAW GIVES YOU THE RIGHT TO:

- Form, join, or assist a union;
- Choose a representative to bargain with us on your behalf;
- Act together with other employees for your benefit and protection;
- Choose not to engage in any of these protected activities.

WE WILL NOT do anything to prevent you from exercising the above rights.

WE WILL NOT refuse to provide the Union with information that is relevant and necessary to its role as your bargaining representative.

WE WILL NOT in any like or related manner, interfere with your rights under Section 7 of the Act.

WE WILL respond to the Union's May 29, July 3, and August 16, 2013 information requests.

WE WILL provide the Union with the information as outlined in Appendix A of the Formal Settlement Agreement.

**H & M PLUMBING AND MECHANICAL
CONTRACTING, INC.**

(Employer)

Dated: _____ By: _____
(Representative) (Title)